

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1117 of 2007

Vijaya .. Petitioner

Vs

1. The State of Tamilnadu,
Rep. by its Secretary to Govt.,
Prohibition & Excise Dept.,
Fort St. George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Egmore,
Chennai 8. ... Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.Rajavelu

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Petitioner, wife of the detenu, by name Lakshmanan @ Thimmas, challenges the order of detention dated 12.2.2007, passed against her husband, by the second respondent in 49/BDFGISSV/2007, branding him as 'Goonda' under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. On the basis of the complaint lodged by one Idayadullah, that on 13.1.2007 at about 18.00 hours, the detenu along with another wrongfully restrained him and threatened at the point of knife to hand over his money and when refused, beat him and took away cash of

Rs.405/- and also snatched his wrist watch and that when the public came to his rescue on hearing his hue and cry, the detenu hurled the soda bottles against the public, which scattered all over the road and thus, created terror and panic at the spot and fled from the scene, a case was registered in Crime No.33/2007 on the file of J.9 Thuraipakkam Police Station, for offences punishable under Sections 341, 392, 427 and 506(2) IPC. During investigation, the detenu was arrested and sent to Court for judicial remand.

3. Taking into consideration the above said ground case as well as one adverse case on the file of same police station in Crime No.12/2007 for the offence punishable under Section 302 IPC., the second respondent, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a 'Goonda'.

4. The main contention of the learned counsel for the petitioner is that when a specific plea has been taken by the detenu in his representation dated 20.3.2007 presented before the Advisory Board that he was taken into custody by the police even on 12.1.2007 and that he was produced before the Court on 16.1.2007 for judicial remand in connection with Cr.No.12/2007 and in the meanwhile, the ground case had been foisted on him, the Government has not considered the said plea while passing the rejection order dated 16.4.2007, which vitiates the impugned order of detention.

5. With reference to the contention of the learned counsel for the petitioner, we have verified the records. It is seen that the detenu had given a representation dated 20.3.2007 stating that he was taken by the police on 12.1.2007 at 8.15 a.m. and was produced before Court on 16.1.2007 for judicial remand in Crime No.12/2007 and in the meanwhile, the ground case had been registered against him in Cr.No.33/2007. When such a specific plea has been taken by the detenu, a duty is cast upon the State to clarify the same while passing the rejection order dated 16.4.2007, more so, when his all other contentions had been touched upon, which in our view, vitiates the order of detention.

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In the result, the Habeas Corpus Petition is allowed and the impugned detention order is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

1. The Secretary, State of Tamil Nadu,
Home, Prohibition & Excise Department,
Fort St. George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Chennai 8.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor
High Court, Madras.
5. The Joint Secretary to Government,
Public Law and Order Department,
Fort St. George, Chennai 9.

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